**State of Maine: Notice of Agency Rulemaking – July 8, 2020**

**PROPOSALS**

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

CHAPTER NUMBER AND TITLE: **Ch. 5**, Certification of Marijuana Testing Facilities

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P135**

BRIEF SUMMARY: The additional part of this existing rule provides marijuana testing facilities, sample collector, and self-sampling licensees with the minimum requirements regarding the qualifications, education, and training for personnel and staff.

PUBLIC HEARING: Wednesday, July 29, 2020 - 10:00 a.m. EDT; Virtual public hearing conducted via Zoom. *A link will be sent out to participants prior to the date of the public hearing. Please contact the Office of Marijuana Policy if you are intending to attend the public hearing.*

COMMENT DEADLINE: Monday, August 10, 2020 at 5:00 p.m. EDT

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / OMP RULEMAKING LIAISON: Erik Gundersen; Office of Marijuana Policy, 162 State House Station, Augusta, ME 04333. Telephone: (207) 287-3282. Fax: (207) 287-2671. Email: Erik.Gundersen@Maine.gov .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES *(if any)*:

STATUTORY AUTHORITY FOR THIS RULE: Title 28-B ch. 1 (*Marijuana Legalization Act*) SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED *(if different)*:

OMP WEBSITE: https://www.maine.gov/dafs/omp/ .

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

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

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

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P136**

BRIEF SUMMARY: OMP is proposing to introduce additional rules to the adopted *Adult Use Marijuana Program Rule* to establish a regulatory framework governing the licensing of sample collectors as well as requirements for licensee self-sampling in Maine. These additional regulations aim to protect the health and safety of the public.

PUBLIC HEARING: Wednesday, July 29, 2020 - 10:00 a.m. EDT; Virtual public hearing conducted via Zoom. *A link will be sent out to participants prior to the date of the public hearing. Please contact the Office of Marijuana Policy if you are intending to attend the public hearing.*

COMMENT DEADLINE: Monday, August 10, 2020 at 5:00 p.m. EDT

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / OMP RULEMAKING LIAISON: Erik Gundersen; Office of Marijuana Policy, 162 State House Station, Augusta, ME 04333. Telephone: (207) 287-3282. Fax: (207) 287-2671. Email: Erik.Gundersen@Maine.gov .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES *(if any)*:

STATUTORY AUTHORITY FOR THIS RULE: Title 28-B ch. 1 (*Marijuana Legalization Act*) SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED *(if different)*:

OMP WEBSITE: https://www.maine.gov/dafs/omp/ .

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

DAFS RULEMAKING LIAISON: Anya.Trundy@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. VII Section 5**, Estate Recovery

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P137**

CONCISE SUMMARY: This rule is being proposed to clarify when an estate recovery claim is subject to recovery in accordance with guidance from the federal Centers for Medicare and Medicaid Services (CMS). Specifically, it changes the requirement in Section 5.04-1, “Processing Claims Against Assets”, part D, to state that any surviving child who is blind or permanently and totally disabled, be disabled at the time the Department seeks recovery. The previous marker was set at the time of the member’s death.

The Department also proposes the following changes:

**\*** Adding language to 5.04-1(D) to define the phrase, “the time the Department seeks recovery” to mean the earlier of (1) the date of the Department’s notice of claim to the legally authorized representative of the estate or known family members or heirs; or (2) the date on which the Department files a claim in Probate Court.

**\*** Adding numbering to 5.07(A) to clarify the application process requirements for all waivers.

**\*** Adding language to 5.08(A)(1)(b) to provide guidance on how the 180% of the Federal Poverty Income level is determined by the Department and what income and asset information is required by the applicant for evaluation.

**\*** Adding language for clarification to 5.08(B)(2)(a) to specify 24 hours a day care must be provided to the member and adding an additional requirement that the member could not be receiving in home services.

**\*** Adding clarification to 5.08(B)(2) that an applicant will receive the highest allowable waiver in instances when an applicant may qualify for more than one care given hardship waiver.

**\*** Updating language in 5.09(B) for clarification of the current Departmental reference.

**\*** Adding clarification to 5.10(A) to incorporate limits of allowable expenses following the Member’s death.

**\*** Finally, the Department is proposing minor language, clerical, and reference number edits.

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

PUBLIC HEARING: No public hearing scheduled. ***Note****: During the Civil State of Emergency declared by the Governor, public hearings are now closed to the public physically attending. During this State of Emergency, the Department will be providing a 30-day comment period instead of a public hearing.*

PUBLIC NOTICED: July 8, 2020

DEADLINE FOR COMMENTS: Comments must be received by 11:59 p.m. on August 7, 2020.

OMS CONTACT PERSON / SMALL BUSINESS IMPACT INFORMATION: Cari Philbrick, Comprehensive Health Planner II, MaineCare Services, 109 Capitol Street - 11 State House Station, Augusta, Maine 04333-0011. Telephone: (207) 624-4031. Fax: (207) 287-6106. TTY: 711 (Deaf or Hard of Hearing). Email: Cari.Philbrick@Maine.gov .

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

STATUTORY AUTHORITY FOR THIS RULE: 22 MRS §§ 42, 3173

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

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

OFI RULEMAKING LIAISON: Jonathan.Leet@Maine.gov .

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

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

AGENCIES: **02-373 - Board of Licensure in Medicine**; **02-383 - Board of Osteopathic Licensure** *(both affiliated with the* Department of Professional and Financial Regulation – PFR*)*

CHAPTER NUMBER AND TITLE: **Ch. 2**, Joint Rule Regarding Physician Assistants

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P138**, **P139**

BRIEF SUMMARY: The Board of Licensure in Medicine and the Board of Osteopathic Licensure propose amendments to a joint rule pertaining to the licensure and practice of physician assistants. The proposed amendments would: amend the definition of certain terms to eliminate registration and supervision; add definitions for certain terms, including “Health Care Facility,” Health Care Team,” Inactive Status License,” and “Physician Group Practice;” eliminates registration and supervision requirements; establishes criteria for “Inactive Status Licenses;” establishes uniform continuing clinical competency requirements; amends the uniform fees; establishes criteria for collaborative agreements and practice agreements; amends the uniform notification requirements to include legal change of name; and amends the continuing medical education (CME) requirements, including 3 hours of CME every 2 years regarding opioid prescribing.

PUBLIC HEARING: None planned. *Requests to hold a public hearing by any interested person may be submitted in writing to the identified agency contact person*.

COMMENT DEADLINE: Friday, August 7, 2020 at 4:30 p.m.

CONTACT PERSONS FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION:

**Medicine**: Dennis E. Smith, Executive Director; Board of Licensure in Medicine, 137 State House Station, Augusta, ME 04333-0137. Telephone: (207) 287-3605. Fax: (207) 287-6590. Email: Dennis.E.Smith@Maine.gov .

**Osteopathic**: Susan E. Strout, Executive Secretary; Board of Osteopathic Licensure, 142 State House Station, Augusta, ME 04333-0142, Telephone: (207) 287-2480. Fax: (207) 536-5811. Email: Susan.E.Strout@Maine.gov .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: Minimal

STATUTORY AUTHORITY FOR THIS RULE: 32 MRS §§ 2562, 2594-E(5); §§ 32 MRS 3269(7), 3270-E(5); 10 MRS §8003(5)(C)(4)

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: PL 2020 ch. 627

BOARD WEBSITES: www.maine.gov/md (Board of Licensure in Medicine); www.maine.gov/osteo (Board of Osteopathic Licensure)

EMAIL FOR BOARD RULEMAKING LIAISONS: [Maureen.S.Lathrop@Maine.gov](mailto:Maureen.S.Lathrop@Maine.gov) (Board of Licensure in Medicine); Susan.E.Strout@Maine.gov (Board of Osteopathic Licensure)

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

CHAPTER NUMBER AND TITLE: **Ch. 332**, MaineCare Eligibility Manual: **MaineCare Rule #298P** (COVID-19 Testing for Uninsured Individuals), **Part 9**, Limited Benefit Groups

PROPOSED RULE NUMBER: **2020-P140**

BRIEF SUMMARY: *The Families First Coronavirus Response Act* (FFCRA) HR 6201, 116 Cong. (2019-2020), PL No. 116-127 (3/18/2020), 134 Stat. 178 *et seq*. specified in Division F, Section 6004(a)(3) that State Medicaid programs were authorized to create an optional coverage group to ensure that services related to testing and diagnosis of COVID-19 are available in response to the pandemic, pursuant to Section 1902(a)(10)(A)(ii)(XXIII) of the *Social Security Act*, 42 USC 1396a(a)(10) as amended. This is a limited coverage benefit that is effective no earlier than March 18, 2020 and ends on the last day of the month in which the federal public health emergency ends, unless otherwise directed by the Centers for Medicare and Medicaid Services. Coverage under this group is available to individuals who are without health insurance, or whose health insurance coverage does not meet the requirements for minimum essential coverage. This rule change adopts the eligibility criteria established within the Act into the *MaineCare Eligibility Manual*. This rule change will reduce barriers to COVID-19 testing and treatment which will improve health outcomes for the specific individuals covered and reduce the spread of this virus throughout the Maine population as a whole.

Additionally, the Department regularly reviews policies to ensure clarity and conformity with state and federal requirements. Clarification was added to each section of Part 9 of this Manual to clarify eligibility criteria and processes. Changes were made to word choice for readability and in the interest of gender neutrality where appropriate.

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

PUBLIC HEARING: None scheduled.

COMMENT DEADLINE: August 9, 2020

CONTACT PERSON FOR THIS FILING: Esther Bullard, MaineCare Program Manager, Department of Health and Human Services - Office for Family Independence, 109 Capitol Street – 11 State House Station, Augusta, ME 04330-6841. Telephone: (207) 624-4178. Fax: (207) 287-3455. TT Users Call Maine Relay – 711. Esther.Bullard@Maine.gov .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None anticipated.

STATUTORY AUTHORITY FOR THIS RULE: 22 MRS §42(1); *The Families First Coronavirus Response Act* (FFCRA) HR 6201, 116 Cong. (2019-2020), PL No. 116-127 (3/18/2020), 134 Stat. 178 *et seq*.

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

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

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

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

**ADOPTIONS**

AGENCY: **02-392** - Department of Professional and Financial Regulation (PFR), Office of Professional and Occupational Regulation (OPOR), **Board of Pharmacy**

CHAPTER NUMBER AND TITLE: **Ch. 36**, Licensure of Opioid Treatment Programs

TYPE OF RULE: Routine Technical

ADOPTED RULE NUMBER: **2020-148**

CONCISE SUMMARY: The principal purpose is to make permanent the emergency rule adopted by the Maine Board of Pharmacy (“Board”) on April 4, 2020. The emergency rule changes in 02-392 CMR ch. 36, *Licensure of Opioid Treatment Programs* (“OTPs”) pursuant to 32 MRS §13751(2)(A) and (3) and the Board’s emergency rulemaking authority under 5 MRS §8054 and in response to the Governor’s *Proclamation of State of Civil Emergency to Further Protect Public Health* (dated March 15, 2020) and the Governor’s Executive Order 19 FY 19/20, *An Order Regarding Essential Businesses and Operations* (effective March 24, 2020).

This emergency rule amended Sections 4(2) and (3) of ch. 36 to remove the requirement that that the PIC be “physically present” for the preparation of all take-home doses and allow other licensed pharmacists who are authorized by the PIC to be present instead. This rule is scheduled to terminate on July 3, 2020 and the Board is taking measures to make this rule permanent and to expand it any state of civil emergency proclamation and not just the on-going COVID-19 public health emergency.

Allowing another licensed pharmacist to be physically present instead of the PIC will not compromise the ability of OTPs to safely prepare take-home doses. During any state of civil emergency declared by the Governor, no pharmacist will be required to be physically present to prepare drugs for delivery, provided that such drugs are prepared by either an advanced practice registered nurse, a registered professional nurse, or a licensed practical nurse who is: 1) licensed by the State Board of Nursing; 2) licensed by the board as a pharmacy technician; and 3) explicitly designated by the pharmacist in charge to prepare drugs in the absence of a pharmacist.

Also, considered for this rule proposal is the March 11, 2020, the Substance Abuse and Mental Health Services Administration (“SAMHSA”) of the United States Department of Health and Human Services issued guidance that would allow states to request that a greater number of patients at OTPs be permitted to receive take-home doses as opposed to receiving single doses administered at the OTP.

EFFECTIVE DATE: July 7, 2020

BOARD CONTACT PERSON: Geraldine L. Betts, Administrator, PFR/Office of Professional and Occupational Regulation, Board of Pharmacy, 35 State House Station, Augusta ME 04333. Telephone: (207) 624-8625. Email: Geraldine.L.Betts@Maine.gov .

BOARD WEBSITE: https://www.maine.gov/pfr/professionallicensing/professions/pharmacy/index.html .

AGENCY: **01-017** - Department of Agriculture, Conservation and Forestry, **Maine State Harness Racing Commission**

CHAPTER NUMBER AND TITLE: **Ch. 9**, Sire Stakes

ADOPTED RULE NUMBER: **2020-149***(Emergency)*

CONCISE SUMMARY: On June 25, the Maine State Harness Racing Commission adopted an emergency amendment to Ch. 9 which waives the requirements for the Commission to approve amendments to the Sire Stakes schedule to approve the base purse.

EFFECTIVE DATE: July 6, 2020

AGENCY CONTACT PERSON / SMALL BUSINESS IMPACT INFORMATION / RULEMAKING LIAISON: Henry Jennings, Maine State Harness Racing Commission, 28 State House Station, Augusta, ME 04333-0028. Telephone: (207) 287-7568. Email: Henry.Jennings@Maine.gov .

COMMISSION WEBSITE: https://www.maine.gov/dacf/harnessracing/index.shtml .

AGENCY: **01-017** - Department of Agriculture, Conservation and Forestry, **Maine State Harness Racing Commission**

CHAPTER NUMBER AND TITLE: **Ch. 19**, Protests, Appeals and Race Date Assignment Hearings

ADOPTED RULE NUMBER: **2020-150** *(Emergency)*

CONCISE SUMMARY: On June 25, the Maine State Harness Racing Commission adopted an emergency amendment to Ch. 19 which waives the requirements for a Notice of Hearing to be distributed at least 10 days prior to reopening the Race Date Award Hearing and allows the Executive Director to move to reopen the Race Date Hearing.

EFFECTIVE DATE: July 6, 2020

AGENCY CONTACT PERSON / SMALL BUSINESS IMPACT INFORMATION / RULEMAKING LIAISON: Henry Jennings, Maine State Harness Racing Commission, 28 State House Station, Augusta, ME 04333-0028. Telephone: (207) 287-7568. Email: Henry.Jennings@Maine.gov .

COMMISSION WEBSITE: https://www.maine.gov/dacf/harnessracing/index.shtml .

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

CHAPTER NUMBER AND TITLE: **Ch. 41**, Menhaden (Menhaden EESA Reduction)

ADOPTION RULE NUMBER: **2020-151** *(Emergency)*

CONCISE SUMMARY: Department of Marine Resources (DMR) was granted approval to participate in the Episodic Event Set Aside (EESA) program to access an available 4.7 million lbs. of menhaden quota. Due to the high rate of effort, it was projected that landings on Monday, June 29 exceeded 2.5 million pounds, and continued fishing would result in an overage of the available EESA. To allow for continued participation in the EESA, the daily landing limit will be reduced to 6,000 lbs. on open harvest days and carriers are prohibited; Mondays and Thursdays. The Commissioner has determined that it is necessary to take emergency action to reduce the daily landing limit to prevent unusual damage to the menhaden resource by exceeding available quota. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171(3)(A).

EFFECTIVE DATE: July 2, 2020

DMR CONTACT PERSON: Melissa Smith, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333-0021. Telephone: (207) 624-6558. Fax: (207) 624-6024. TTY: (207) 633-9500 (Deaf/Hard of Hearing). Email: Melissa.Smith@Maine.gov .

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

DMR WEBSITE: https://www.maine.gov/dmr/index.html .

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

AGENCY: **99-346 - Maine State Housing Authority (MaineHousing)**

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

ADOPTED RULE NUMBER: **2020-152**

CONCISE SUMMARY: The rule, as repealed and replaced, is the qualified allocation plan for allocating and administering the 2021-2022 state ceiling of federal low income housing tax credits for the State of Maine.

EFFECTIVE DATE: July 12, 2020

MAINEHOUSING CONTACT PERSON / RULEMAKING LIAISON: Linda Uhl, Chief Counsel, Maine State Housing Authority, 26 Edison Drive, Augusta, Maine, 04330-6046. Telephone: (207) 626-4600. 711 (Maine Relay). Email: luhl@mainehousing.org .

AGENCY WEBSITE: https://www.mainehousing.org/ .

AGENCY: **99-346 - Maine State Housing Authority (MaineHousing)**

CHAPTER NUMBER AND TITLE: **Ch. 24**, Home Energy Assistance Program Rule

ADOPTED RULE NUMBER: **2020-153**

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 Supplemental Benefits, weatherization, and heating system repair and replacement funds to low-income households in the State of Maine. This replacement rule: amends the definitions of "Dwelling Unit", "Live-in Care Attendant", and "Priority Applicant"; allows expired government-issued photo identification cards to be accepted as documentation for a Primary Applicant; expands Dwelling Unit eligibility; modifies the amount of a Household's HEAP Benefit that can be recuperated to address Overpayments; establishes the Benefit amount available for eligible Households that have no calculated energy costs; expands allowable costs for Energy Crisis Intervention Program funds; removes the requirement that all Central Heating Improvement Program jobs over $1,000 have a final inspection; allows Subgrantees to charge support costs associated with taking and processing HEAP Applications to Administrative dollars; removes the option to have HEAP Benefits retroactively applied to Home Energy deliveries that have already been paid; adjusts the minimum monthly payment amount for Households entering into a repayment agreement for an Overpayment; and clarifies that HEAP Applicants will be provided an opportunity for a fair administrative hearing if they dispute the amount of their HEAP Benefit. Other changes correct errors or provide clarification to the previous version of the rule.

EFFECTIVE DATE: July 12, 2020

MAINEHOUSING CONTACT PERSON / RULEMAKING LIAISON: Linda Uhl, Chief Counsel, Maine State Housing Authority, 26 Edison Drive, Augusta, Maine, 04330-6046. Telephone: (207) 626-4600. 711 (Maine Relay). Email: luhl@mainehousing.org .

AGENCY WEBSITE: https://www.mainehousing.org/ .