**State of Maine: Notice of Agency Rulemaking – August 17, 2022**

**NOTICE OF STATE RULEMAKING**

**Public Input for Rules**

Notices are published each Wednesday to alert the public regarding state agency rulemaking. You may obtain a copy of any rule by notifying the agency contact person. You may also comment on the rule, and/or attend the public hearing. If no hearing is scheduled, you may request one - the agency may then schedule a hearing, and must do so if 5 or more persons request it. If you are disabled or need special services to attend a hearing, please notify the agency contact person at least 7 days prior to it. **Petitions**: you can petition an agency to adopt, amend, or repeal any rule; the agency must provide you with petition forms, and must respond to your petition within 60 days. The agency must enter rulemaking if the petition is signed by 150 or more registered voters, and may begin rulemaking if there are fewer. You can also petition the Legislature to review a rule; the Executive Director of the Legislative Council (115 State House Station, Augusta, ME 04333, phone (207) 287-1615) will provide you with the necessary petition forms. The appropriate legislative committee will review a rule upon receipt of a petition from 100 or more registered voters, or from "...any person who may be directly, substantially and adversely affected by the application of a rule..." (Title 5 §11112). **World‑Wide Web**: Copies of the weekly notices and the full texts of adopted rule chapters may be found on the internet at: http://www.maine.gov/sos/cec/rules. There is also a list of rulemaking liaisons (http://www.maine.gov/sos/cec/rules/liaisons.html), who are single points of contact for each agency.

**PROPOSALS**

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

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2022-P157**

BRIEF SUMMARY: This chapter describes the licensing process and safety regulations for the sale of consumer fireworks in Maine.

PUBLIC HEARING: N/A

COMMENT DEADLINE: September 19, 2022

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / RULEMAKING LIAISON: Richard E. Taylor, Planning and Research Analyst, Office of the Maine State Fire Marshal, 52 State House Station, Augusta, Maine 04333. (207) 626-3873. Email: Richard.E.Taylor@Maine.gov.

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None

STATUTORY AUTHORITY FOR THIS RULE: 8 MRS §236; 25 MRS §2452

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

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

**ADOPTIONS**

AGENCY: **10-144** - Department of Health and Human Services (DHHS), **Office of MaineCare Services (OMS)**

CHAPTER NUMBER AND TITLE: **Ch. 101**, MaineCare Benefits Manual (MBM): **Ch. II Section 93**, Opioid Health Home Services, *and* **Ch. III Section 93**, Reimbursement for Opioid Health Home Services

ADOPTED RULE NUMBER: **2022-147**

CONCISE SUMMARY: The Department of Health and Human Services (the “Department”) finally adopts these rule changes in 10-144 CMR Ch. 101, *MaineCare Benefits Manual*, Ch. II Section 93, “Opioid Health Home Services”, and Ch. III Section 93, “Reimbursement for Opioid Health Home Services”, to improve access to treatment, reduce administrative barriers to providing treatment for Opioid Use Disorder (OUD), promote evidence-based treatment standards, and reinforce the importance of Opioid Health Home (OHH) integration with primary care. The Department received approval of a state plan amendment (SPA) from the Centers for Medicare & Medicaid Services (CMS) for some of these changes. The Department will publish notice of changes in reimbursement methodology pursuant to 42 CFR 447.205.

These rules will be legally effective on August 21, 2022.

The adopted rules consist of the following changes in Ch. II Section 93, “Opioid Health Home Services”, and Ch. III Section 93, “Reimbursement for Opioid Health Home Services”:

**A.** **Chapter II Section 93, *OpioId Health Home Services***

The adopted rule makes various changes to the Medication for Opioid Use Disorder (MOUD) prescriber position. It allows practitioners licensed under state and federal law to order, administer, or dispense opioid agonist treatment medications to be MOUD prescribers for members in the Methadone Level of Care who receive OHH services from an Opioid Treatment Program (OTP). It requires the MOUD prescriber to coordinate with the OTP OHH when members in the Methadone Level of Care receive OHH services from a non-OTP OHH. It also requires MOUD prescribers to be involved in providing the services described under Ch. II Section 93.05-1, “Health Home Services”.

The adopted rule makes various changes to the nurse care manager position on the OHH team. In response to requests from providers, the adopted rule allows licensed practical nurses to be nurse care managers. It requires any person serving as the nurse care manager to complete the eight-hour training for buprenorphine prescribing by physicians within six months of initiating service delivery for OHH members, unless the individual is an Advanced Practice Registered Nurse with a X-Drug Enforcement Administration (DEA) license. It no longer requires the nurse care manager to oversee and/or participate in all aspects of OHH services because the nurse care manager would not oversee OUD counseling. The final rule specifies that the nurse care manager position may be filled by another appropriately licensed medical professional on the OHH team, as long as the individual completes training for an X-DEA license within six months of initiating service delivery for OHH members.

The adopted rule adds methadone to the medications included in the OHH model and enables an OTP to provide methadone to OHH members. The adopted rule also adds a statement encouraging the co-prescribing of naloxone for OHH members, as appropriate, in alignment with best practice guidelines.

The adopted rule makes a number of changes to the counseling requirement. It clarifies that counseling is not required for the Medication Plus Level of Care and is not part of the OHH bundle for the Methadone Level of Care. It changes the counseling requirement to be assessed on a monthly instead of weekly basis, which is in response to feedback that weekly requirements are too stringent for this service and are challenged by normal life events. It clarifies that counseling requirements for each clinical phase are based on a “billable” month (in alignment with standard billing practice), which does not always equate to a full 60 minutes of counseling. The final rule requires OHH members in Intensive Outpatient (IOP) and Induction Levels of Care to engage in individual or group counseling for four billable hours per month; members in the Stabilization Level of Care for two hours; and members in the Maintenance Level of Care for one hour.

The adopted rule makes various changes to the reimbursement section. The adopted rule allows providers to bill the new Medication Plus and Methadone Levels of Care if the member is enrolled for at least one day during the billing month. It adds that OHH providers will not be reimbursed for an OHH member if that member also receives Section 97, “Private Non-Medical Institution Services”; Section 13, “Targeted Case Management Services”; Section 17, “Community Support Services”; or Section 92, “Behavioral Health Homes”, unless the Section 13, 17, or 92 provider has a contract with the OHH to provide Health Home Services. The final rule also adds an Additional Provider Support provision for OHH members with additional community support needs related to mental health, HIV, medical concerns and/or utilization, and/or homelessness. The Department or its authorized entity must approve additional supports provided to eligible members and reimbursed through the pass-through payment described in Ch. III Section 93, “Reimbursement for Opioid Health Home Services”, including an active release of information and a contractual agreement between the OHH and additional support provider.

The adopted rule also adds a pay-for-performance provision which withholds four percent of total OHH per member per month (PMPM) payments. This amount shall be paid to providers every six months if they satisfy the minimum performance threshold, and providers who meet the excellent performance threshold are eligible to receive any additional available amount. The Department shall set the performance thresholds so that no less than 70% of eligible OHHs are expected to be above the minimum performance threshold and no less than 20% of OHHs are expected to be above the excellent performance threshold. This means the Department anticipates that no more than 30% of eligible OHHs would not meet the minimum performance threshold and thus would not receive the four percent payment. Those four percent withhold amounts will be combined and distributed to OHH providers that meet the excellent performance threshold. If all OHH providers do satisfy the minimum performance threshold, then no amounts would be distributed to OHH providers who satisfy the excellent performance threshold. Performance calculations shall be based on the composite score of three performance measures, as set forth in the adopted rule. Providers shall receive reports quarterly to inform them about whether they satisfied the minimum or excellent performance threshold standards, what their reimbursement shall be, as well as instructions for appeal if they disagree with the Department’s determinations.

This adopted rule also makes the following changes:

**\*** Clarifies that the clinical counselor provides behavioral health expertise and contributes to care planning, assessment of individual care needs, and identification of and connection to behavioral health services, as part of the services described in Ch. II Section 93.05-1.

**\*** Allows community health workers to be patient navigators, in response to requests from providers. A definition and certification/training requirements for community health workers is also added.

**\*** Requires Connecticut Community for Addiction Recovery (CCAR) or other Department approved recovery coach training for recovery coaches. OHHs will have six months from rule adoption to train existing staff, and each new recovery coach will have six months to complete the applicable training upon starting to deliver OHH services.

**\*** Encourages people with lived experience to serve as recovery coaches but also allows recovery allies to serve as recovery coaches.

**\*** Requires the OHH to adopt processes to identify and classify patients across their population served who are missing critical preventive services and/or other health screenings.

**\*** Adds that members must be assessed for appropriateness of OHH services in alignment with American Society of Addiction Medicine guidelines.

**\*** Requires OHHs to retain a signed consent form for all OHH members in the member record. The documentation must indicate that the individual has received information in writing, and verbally as appropriate, that explains the OHH purpose and the services provided and indicates that the individual has consented to receive the OHH services and understands their right to choose, change, or disenroll from their OHH provider at any time.

**\*** Requires OHH providers to provide and document efforts to connect each OHH member to a primary care provider.

**\*** Adds that health promotion activities may include health education and referral support for health-related risk factors (e.g. oral health, contraceptive counseling, preventive screenings).

**\*** Removes language that referred to “coordinated case management” to align with language for the approved MaineCare SPA for these services, which instead utilizes an expanded team-based approach for the provision of additional supports, reimbursed through pass-through payments.

**\*** Requires OHHs to conduct a comprehensive biopsychosocial assessment annually.

**\*** Replaces Medication Assisted Treatment (MAT), which insinuates that medication assists treatment, with MOUD, a more current term that insinuates medication is its own form of treatment.

**\*** Adds Section 93.02-1(K) which contains the requirement that OHHs shall refer members to another OHH or appropriate provider when a member requires treatment or a level of care that the OHH does not offer.

**\*** Changes the term “dosage plan” to “medication plan.”

**\*** Changes Section 93.02-1(G) to require OHHs to establish and maintain a relationship with a primary care provider when an OHH member has a primary care provider, rather than require OHHs to establish and maintain a relationship with a primary care provider for each member served, which did not accurately reflect the requirement the Department intended to establish.

**B.** **CHAPTER III SECTION 93, *REIMBURSEMENT FOR OPIOID HEALTH HOME SERVICES***

The adopted rule introduces the Medication Plus and Methadone Levels of Care. The Medication Plus Level of Care reimburses for all OHH covered services except for OUD counseling, which allows members to receive OUD medication without electing to participate in OUD counseling. The Methadone Level of Care allows members who receive methadone from Ch. II Section 65, “Behavioral Health Services”, providers to receive Health Home services from the team-based care delivery model of the OHH.

Under the current rule, when members receiving OHH services elect to receive comprehensive care management and comprehensive transitional care from an additional support provider, the Department reimburses both providers separately. CMS advised that the OHH must reimburse the additional support provider via a pass-through payment. Hence, this final rule increases the reimbursement amount to the OHH provider to include a pass-through payment of $394.40 for the IOP, Induction, Stabilization, and Maintenance Levels of Care when members elect to receive services from an additional support provider.

In alignment with the Department’s goal to implement value-based payment models tied to quality, the final rule adds a pay-for-performance provision that will withhold four (4) percent of OHH payments, pending the OHH’s performance on three measures of OHH quality and effectiveness of service. The measures include assessing whether members in Maintenance and Stabilization Levels of Care have attended an annual primary care visit, had continuous pharmacotherapy as part of their MOUD, and are involved in regular employment or other forms of community engagement. While the methodology for this pay-for-performance provision is detailed in rule, MaineCare will evaluate the need for adjustments to ensure OHH providers are not inappropriately penalized for the costs or changes in quality/utilization that result from COVID-19. Performance measure thresholds and the performance of other providers will determine if OHHs receive the full four percent and if they are eligible for a pay-for-performance surplus payment.

As a result of the cost-of-living-adjustment implemented through [PL 2021 ch. 635 part A](http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP1482&item=3&snum=130), the Department increased the proposed reimbursement rates in the final Ch. III Section 93, rule by 4.94%.

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

**EFFECTIVE DATE**: August 21, 2022

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STATUTORY AUTHORITY: 22 MRS §§ 42, 3173; PL 2021 ch. 635 part A

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

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

ADOPTED RULE NUMBER: **2022-148**

CONCISE SUMMARY: This rule 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.

EFFECTIVE DATE: August 16, 2022

DMR CONTACT PERSON / SMALL BUSINESS IMPACT INFORMATION: Amanda Ellis, 21 State House Station, Augusta, Maine 04333. Telephone: (207) 624-6573. Fax: (207) 624-6024. TTY: (207) 633-9500 (Deaf/Hard of Hearing). Email: (207) 624-6573.

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

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

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

CHAPTER NUMBER AND TITLE: **Ch. 26**, Sea Urchins (2022-2023 Season)

ADOPTED RULE NUMBER: **2022-149**

CONCISE SUMMARY: This regulation establishes open harvest days and tote limits for the taking of sea urchins by divers, rakers, trappers, and draggers in Zones 1 and 2 for the 2022-2023 season. For Zone 1, seasons are implemented for divers, trappers, rakers and draggers in 2022-2023, from which harvesters may only fish up to 15 days of their choosing, the same number of days allowed during the 2021-2022 season. For Zone 1, the daily tote limit is nine (9), the same as in the 2021-2022 season. For Zone 2, 40-day seasons are implemented for divers, trappers, rakers and draggers in 2022-2023, from which harvesters may only fish up to 30 days of their choosing. This regulation has the same number of fishing days and opportunity days as the 2021-2022 season. For the Whiting & Dennys Bays Limited Access Area in Zone 2, a 15-day season is implemented for Zone 2 divers, trappers, rakers and draggers in 2022-2023. For Zone 2, the daily tote limit is six (6), the same as in the 2021-2022 season.

The Blue Hill Bay Limited Access Area designation sunset on April 1, 2022 and that language has been removed from the regulation.

EFFECTIVE DATE: August 16, 2022

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

CHAPTER NUMBER AND TITLE: **Ch. 50.02(A)**, Spiny Dogfish: Harvest, Possession, and Landing Restrictions

ADOPTED RULE NUMBER: **2022-150**

CONCISE SUMMARY: On May 1, 2022, the Department of Marine Resources (DMR) adopted an emergency rule that increased the spiny dogfish commercial trip limit in Maine state waters to 7,500 pounds per calendar day or 24-hour period. The increased trip limit aligned Maine’s regulations with the 2022 fishing year spiny dogfish specifications published by NOAA Fisheries on April 7, 2022 and with a recent vote at the Atlantic States Marine Fisheries Commission to mirror the federal waters trip limit in state waters. As emergency rules are temporary, this rule adopts the May 1, 2022 emergency rule making it part of DMR’s regular rules.

EFFECTIVE DATE: August 20, 2022

DMR CONTACT PERSON / SMALL BUSINESS IMPACT INFORMATION: Amanda Ellis, 21 State House Station, Augusta, Maine 04333. Telephone: (207) 624-6573. Fax: (207) 624-6024. TTY: (207) 633-9500 (Deaf/Hard of Hearing). Email: (207) 624-6573.

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AGENCY: **94-411 - Maine Public Employees Retirement System (MainePERS)**

CHAPTER NUMBER AND TITLE: **Ch. 414**, Required Minimum Distributions

TYPE OF RULE: Routine Technical

ADOPTED RULE NUMBER: 2022-151

BRIEF SUMMARY: This rule establishes the date when a member must begin to receive a service retirement benefit or withdraw accumulated contributions under a retirement program pursuant to *Internal Revenue Code* Section 401(a)(9), and any Code requirements on the form of distribution. The amendments to the rule establish the form and timing of the payment of a required minimum distribution to a beneficiary of a deceased vested member who does not otherwise execute a benefit selection form in a timely manner.

EFFECTIVE DATE: August 20, 2022

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / MainePERS RULEMAKING LIAISON: Kathy J. Morin, Director, Actuarial and Legislative Affairs, Maine Public Employees Retirement System, P.O. Box 349, Augusta, ME 04332-0349. Telephone: 1 (800) 451-9800 or (207) 512-3108. Email: Kathy.Morin@MainePERS.org

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None

STATUTORY AUTHORITY FOR THIS RULE: 5 MRS §§ 17103(4), 17603(9)

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

MainePERS WEBSITE: <https://MainePERS.org>