**State of Maine: Notice of Agency Rulemaking – August 18, 2021**

**PROPOSALS**

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. I Section 6** *(New)*, Global HCBS Waiver Person-Centered Planning and Settings Rule

PROPOSED RULE NUMBER: **2021-P139**

CONCISE SUMMARY: This new rule proposes to implement the federal requirements for Maine’s Section 1915(c) home and community-based waiver programs as set forth in 42 CFR §441.301(c), and includes requirements for person-centered service planning and for settings in which home and community-based waiver services (“HCBS”) are provided, including requirements for provider-owned or controlled residential settings.

The proposed rule implements additional requirements or changes to HCBS waiver programs under the following sections of the *MaineCare Benefits Manual*:

**Section 18**: Home and Community-Based Services for Adults with Brain Injury;

**Section 19**: Home and Community Benefits for the Elderly and Adults with Disabilities;

**Section 20**: Home and Community-Based Services for Adults with Other Related Conditions;

**Section 21**: Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder; and

**Section 29**: Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder.

In the event of conflict between the requirements of this proposed rule and any rule listed above, the terms of the proposed rule will supersede and shall apply.

The proposed rule tracks closely the federal requirements set forth in 42 CFR §441.301(c). It clarifies that the Member leads the person-centered planning process and that the process should reflect the Member’s cultural considerations and provide necessary information to allow the Member to make informed choices and decisions. The proposed rule establishes general requirements for HCBS settings so that the setting ensures the Member’s rights of privacy, dignity and respect, freedom from coercion and restraint, and facilitates individual choice regarding HCBS waiver services and settings.

There are additional proposed requirements for provider-owned or controlled residential settings. These include Members having privacy in their sleeping or living unit; Members having freedom to access food at any time; and Members having the ability to have visitors at any time. The proposed rule also contains a provision related to certain disability-specific settings (such as Sec. 18 Work Ordered Club House Services). The rule leaves open the Department’s ability to amend Sec. 18, Sec. 20, Sec. 21 and/or Sec. 29 regulations through rulemaking to impose additional requirements.

Finally, the proposed rule outlines requirements for provider qualifications as well as oversight and enforcement to ensure full compliance with HCBS waiver services and related sections of the *MaineCare Benefits Manual* including Ch. I Sec. I, “General Administrative Policies and Procedures”.

The Department shall submit to CMS and anticipates CMS approval of Waiver amendments related to this rule.

The proposed rule will become effective 5 days after the finally adopted rule is filed with the Secretary of State’s office, per 5 MRS §8052(6), except that for those HCBS settings that were approved as settings prior to March 17, 2014, Sections 6.04 (Home and Community-Based Settings General Requirements) and 6.04(B) (Additional Requirements for Provider-Owned or Controlled Residential Settings) will be effective on July 31, 2022.

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

STATUTORY AUTHORITY: 22 MRS §§ 42, 3173, 42 CFR §441.301(c)

PUBLIC HEARING: For this rulemaking, a public hearing will not be held. *The Department will accept email and standard mail comments for 30 days following rule filing with the Secretary of State.*

PUBLIC NOTICED: August 18, 2021

DEADLINE FOR COMMENTS: Comments must be received by 11:59 p.m. on September 16, 2021.

OMS CONTACT PERSON / SMALL BUSINESS IMPACT INFORMATION: Heather Bingelis, Comprehensive Health Planner II, MaineCare Services, 109 Capitol Street – 11 State House Station, Augusta, Maine 04333-0011. Telephone: (207)-624-6951. Fax: (207) 287-6106. TTY: 711 (Deaf or Hard of Hearing). Email: [Heather.Bingelis@Maine.gov](mailto:Heather.Bingelis@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)*:

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

OMS RULEMAKING LIAISON: [Thomas.Leet@Maine.gov](mailto:Thomas.Leet@Maine.gov) .

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

DHHS RULEMAKING LIAISON: [Kevin.Wells@Maine.gov](mailto:Kevin.Wells@Maine.gov) .

AGENCY: **06-096 - Department of Environmental Protection (DEP)**

CHAPTER NUMBER AND TITLE: **Ch. 168**, Statewide Greenhouse Gas Emissions Regulation

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2021-P140**

BRIEF SUMMARY: The proposed rule defines the overall reductions in GHG emissions that the State must achieve by both 2030 and 2050. Department staff will use these reduction targets to document progress in emissions reductions in the biennial report to the Legislature on the State GHG inventory.

38 MRS §576-A(4) requires the Department to adopt rules to ensure compliance with the levels established by subsections 1 to 3 of §576-A. This proposed rule establishes the amount by which statewide greenhouse gas emissions must be reduced in order to achieve that compliance.

PUBLIC HEARING: N/A

COMMENT DEADLINE: September 17, 2021

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACTINFORMATION: Stacy Knapp, Maine Department of Environmental Protection, 17 State House Station, Augusta, ME 04333. Telephone: (207) 287-2235. Email: [Stacy.R.Knapp@Maine.gov](mailto:Stacy.R.Knapp@Maine.gov) .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: N/A

STATUTORY AUTHORITY FOR THIS RULE: 38 MRS §576-A

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: N/A

DEP WEBSITE: <https://www.maine.gov/dep/> .

DEP RULEMAKING LIAISON: [Mark.T.Margerum@Maine.gov](mailto:Mark.T.Margerum@Maine.gov) .

**ADOPTIONS**

AGENCY: **10-144** - Department of Health and Human Services (DHHS), **Maine Center for Disease Control and Prevention (Maine CDC)**

CHAPTER NUMBER AND TITLE: **Ch. 264**, Immunization Requirements For Healthcare Workers

TYPE OF RULE: Emergency Routine Technical

ADOPTED RULE NUMBER: **2021-166** *(Emergency)*

CONCISE SUMMARY: In accordance with 5 MRS §8054, the Department is amending 10-144 CMR ch. 264, *Immunization Requirements For Healthcare Workers*, on an emergency basis to immediately add COVID-19 to the list of vaccine-preventable diseases for which employees of a licensed nursing facility, residential care facility, Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID), multi-level healthcare facility, hospital, or home health agency subject to licensure by the State of Maine, Department of Health and Human Services Division of Licensing and Certification must be immunized. In addition, the Department is also requiring Emergency Medical Services Organizations and Dental Health Practices to require all employees to provide proof of immunization against COVID-19. Employees who do not provide proof of immunization must be excluded from the workplace for the duration of the Department’s declared public health emergency, currently in effect, which started July 1, 2021. Requiring these healthcare workers to be immunized against COVID-19 is necessary to avoid or mitigate the spread of COVID-19, including, in particular, the Delta variant, which is significantly more contagious than past versions of the virus and poses an immediate threat to public health, safety, and general welfare. Specifically, this requirement will slow the spread of COVID-19, protecting both healthcare workers and the public from infection, serious illness, hospitalization, and/or death. Additionally, this requirement will help to prevent strain on the healthcare system both by limiting the number of hospitalizations as a result of COVID-19 and by protecting individual members of the workforce. The emergency routine technical rule remains in effect for up to ninety (90) days pursuant to 5 MRS §8054(3). To avoid any lapse in this new immunization requirement, the Department is planning to engage in the standard rulemaking process, which will, in addition to other non-emergency changes, propose these changes to become permanent.

EFFECTIVE DATE: August 12, 2021

MAINE CDC CONTACT PERSON: Bridget Bagley, DHHS – Maine CDC), 286 Water Street - 11 State House Station, Augusta, ME 04333. Telephone: (207) 287-9394. Email: [Bridget.Bagley@Maine.gov](mailto:Bridget.Bagley@Maine.gov) .

MAINE CDC RULES WEBSITE: <http://www.maine.gov/dhhs/mecdc/rules/> .

MAINE CDC WEBSITE: <https://www.maine.gov/dhhs/mecdc/> .

MAINE CDC RULEMAKING LIAISON: [Tera.Pare@Maine.gov](mailto:Tera.Pare@Maine.gov) .

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

DHHS RULEMAKING LIAISON: [Kevin.Wells@Maine.gov](mailto:Kevin.Wells@Maine.gov) .

AGENCY: **03-201 - Maine Department of Corrections (MDOC)**

CHAPTER NUMBER AND TITLE: **Ch. 5** *(New)*, Advisory Rulings

ADOPTED RULE NUMBER: **2021-167**

CONCISE SUMMARY: The Department of Corrections adopts this rule to provide a process for the submission, consideration, and disposition of requests for advisory rulings submitted by interested persons as required by 5 M.R.S.A. Section 9001.

EFFECTIVE DATE: August 24, 2021

MDOC CONTACT PERSON / RULEMAKING LIAISON: Mary Lucia, Maine Department of Corrections, 111 State House Station, Augusta, ME 04333. Telephone: (207) 530-0983. Email: [Mary.A.Lucia@Maine.gov](mailto:Mary.A.Lucia@Maine.gov) .

MDOC WEBSITE: <https://www.maine.gov/corrections/> .