**State of Maine: Notice of Agency Rulemaking – September 8, 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** *(Hearing Scheduled)*

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.

PUBLIC HEARING: 11 a.m., Tuesday, September 28, 2021. *Due to the ongoing threat posed by COVID-19 (see below), DHHS has determined that its public hearing will be conducted solely remotely, via Zoom.*

Zoom Meeting link: <https://mainestate.zoom.us/j/89675358898>

Meeting ID: 896 7535 8898

*Some devices may require downloading a free app from Zoom prior to joining the public hearing event. The Department requests that any individual requiring special arrangements to participate in the hearing contact the person listed for this filing 5 days in advance of the hearing.*

**Rationale for remote public hearing**: Cases of COVID-19 have increased over 1,000% nationally between June 18, 2021 and August 25, 2021. This increase has been driven by the highly transmissible B.1.617.2 (Delta) variant of SARS-CoV-2, the virus that causes COVID-19. DHHS is concerned about this increase in COVID-19 and seeks to avoid the threat to public health and safety by conducting this public hearing solely remotely. There is an ongoing federal public health emergency due to COVID-19. The Secretary of the United States Department of Health and Human Services first declared a public health emergency (PHE) due to COVID-19 on January 31, 2020, and most recently renewed the PHE on July 20, 2021. On March 13, 2020, the President of the United States issued a proclamation that the COVID-19 outbreak constitutes a national emergency, which was most recently continued on February 24, 2021. As of August 30, 2021, 11 counties in Maine were designated as high risk.

In addition to the public hearing, individuals may submit written comments to DHHS by the date listed in this notice.

PUBLIC NOTICE: September 8, 2021

DEADLINE FOR COMMENTS: Comments must be received by 11:59 p.m. on October 8, 2021

OMS CONTACT PERSON: 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)

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

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

CONTACT PERSON FOR SMALL BUSINESS INFORMATION: N/A

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

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

OMS RULEMAKING LIAISON: Jennifer.Patterson@Maine.gov .

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

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: Routine Technical

PROPOSED RULE NUMBER: **2021-P151**

BRIEF SUMMARY: The Department is proposing routine technical rule changes to amend 10-144 CMR ch. 264, *Immunization Requirements for Healthcare Workers*. The Department proposes to change the name of the rule to “Immunization Requirements for Workers in Certain Healthcare Settings”. The Department proposes to add COVID-19 to the list of vaccine preventable diseases for which Designated Healthcare Facility employees must show proof of immunization or provide appropriate exemption documentation. The Department also proposes to add employees of EMS Organizations and Dental Health Practices to the list of settings covered by this rule and to require employees in those settings to provide proof of immunization against COVID-19, or to submit documentation supporting an exemption pursuant to 22 MRS §802(4-B). The Department also proposes to clarify the definition of “employee” to exclude employees who exclusively work remotely and add definitions of “Dental Care Practice”, “EMS Organization”, “Health Official” and “Healthcare Setting”, as well as clarify exclusion and reporting requirements and specify the manner in which annual survey data may be used. The Department adopted an emergency rule, effective August 12, 2021, that requires employees of Designated Healthcare Facilities, EMS Organizations, and Dental Health Practices to receive a final dose of COVID-19 immunization by September 17, 2021. That rule remains in effect until November 10, 2021, or until this rule becomes effective, whichever is earlier.

DHHS has determined that its public hearing will be conducted solely remotely, via Zoom. The link and information about the hearing is provided in the details below. Cases of COVID-19 have increased over 1,117.9% nationally between June 18, 2021 and August 25, 2021. As of August 25, 2021, 38,321,339 COVID-19 total cases were reported. This increase has been driven by the highly transmissible B.1.617.2 (Delta) variant of SARS-CoV-2, the virus that causes COVID-19. DHHS is concerned about this increase in COVID-19 and seeks to avoid the threat to public health and safety by conducting this public hearing solely remotely. As noted in DHHS’s findings in support of the emergency rule, there is an ongoing federal public health emergency due to COVID. The Secretary of the United States Department of Health and Human Services first declared a public health emergency (PHE) due to COVID-19 on January 31, 2020, and most recently renewed the PHE on July 20, 2021. On March 13, 2020, the President of the United States issued a proclamation that the COVID-19 outbreak constitutes a national emergency, which was most recently continued on February 24, 2021. As of August 30, 2021, 11 counties in Maine were designated as high risk.

Due to this ongoing threat posed by COVID-19, many public forums continue to conduct business electronically, including proceedings in various courts in Maine, State offices, State legislative committees, and other public bodies. If this public hearing were to be held in person, DHHS reasonably expects that there could be hundreds of individuals who appear in person at the public hearing, potentially not vaccinated and without masks. To protect the health and safety of its own employees, as well as the greater public, DHHS finds that conducting the public hearing solely remotely is the most appropriate option under these circumstances. In addition to the public hearing, individuals may submit written comments to DHHS by date listed in this notice.

PUBLIC HEARING: September 27, 2021 at 9:00 a.m. to 12:00 noon via Zoom at <https://zoom.us/j/92750536454?pwd=Y0EvUFY1NFhzalhzdnVmZnJWUktwUT09>; Meeting ID: 927 5053 6454; Passcode: 389358

COMMENT DEADLINE: 5:00 p.m. October 7, 2021

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT STATEMENT: Bridget Bagley, DHHS- Maine CDC, 286 Water Street - 11 State House Station, Augusta, ME, 04333-0011. Telephone: (207) 287-9394 or 711 (TTY). Fax: (207) 287-2887. Email to submit comments: stakeholders.MECDC@maine.gov .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None anticipated.

STATUTORY AUTHORITY FOR THIS RULE: 22 MRS §802

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

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

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MAINE CDC RULEMAKING LIAISON: Tera.Pare@Maine.gov .

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

**ADOPTIONS**

AGENCY: **02-380 - Maine State Board of Nursing**

CHAPTER NUMBER AND TITLE: **Ch. 5**, Regulations Relating to the Training and Delegation by Registered Professional Nurses of Selected Nursing Tasks to Certified Nursing Assistants

ADOPTED RULE NUMBER: **2021-176**

CONCISE SUMMARY: Reduces the number of hours of the Certified Nursing Assistant (CNA) Prescribed Curriculum to coincide with changes in the CNA curriculum, provides for more flexibility with additional CNA skills training, quantifies the meaning of the ability to read and write English, and clarifies what recently graduated means in the section for certified nursing assistants from out of state.

EFFECTIVE DATE: September 6, 2021

BOARD CONTACT PERSON: Kim Esquibel, PhD, MSN, RN, Maine State Board of Nursing, 158 State House Station, Augusta ME 04333. Telephone: (207) 287-1148. Email: Kim.Esquibel@Maine.gov .

BOARD WEBSITE: <https://www.maine.gov/boardofnursing/> .

BOARD RULEMAKING LIAISON? Virginia.E.deLorimier@Maine.gov .